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(4)  
No. 97-1099

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**In the Supreme Court of the United States**

OCTOBER TERM, 1997

U S WEST, INC., CROSS-PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

ON CROSS-PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

**BRIEF FOR THE FEDERAL COMMUNICATIONS  
COMMISSION AND THE UNITED STATES**

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## QUESTIONS PRESENTED

1. Whether the Federal Communications Commission reasonably construed 47 U.S.C. 251(c)(3), which entitles "any requesting telecommunications carrier" to obtain access to unbundled elements of the incumbent carrier's network, to permit requesting carriers to obtain access to such elements as a means of providing telecommunications services whether or not they have constructed some facilities of their own.

2. Whether the Commission reasonably determined that, under 47 U.S.C. 153(29), vertical switching functions—such as caller identification and call forwarding—are "features" and "functions" of the switch that fall within the scope of a requesting carrier's right of unbundled access to the switching element.

3. Whether the Commission reasonably determined the manner and extent to which the provisions of 47 U.S.C. 251(d)(2) affect an incumbent carrier's general unbundled access obligations under 47 U.S.C. 251(c)(3).



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### **OPINION BELOW**

The principal opinion of the court of appeals (Pet. App. 1a-67a), as amended by the court's order on rehearing (*id.* at 68a-72a), is reported at 120 F.3d 753. The First Report and Order of the Federal Communications Commission (FCC) is reported at 11 FCC Rcd. 15,499 (1996).

### **JURISDICTION**

The principal judgment of the court of appeals was entered on July 18, 1997. A subsequent order, granting rehearing in part and denying rehearing in part, was issued on October 14, 1997. The present cross-petition was filed on January 5, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## DISCUSSION

On November 19, 1997, the FCC and the United States filed a petition for certiorari in *Federal Communications Commission, et al. v. Iowa Utilities Board, et al.*, No. 97-831. That petition, along with the petitions of several other parties, seeks review of the court of appeals decision at issue in this conditional cross-petition. Two previous cross-petitions have also been filed, seeking conditional review of the same decision. See *Ameritech Corporation, et al. v. Federal Communications Commission, et al.*, No. 97-1075 (filed Dec. 24, 1997) (Regional Bell Cross-Pet.) and *GTE Midwest Incorporated v. Federal Communications Commission, et al.*, No. 97-1087 (filed Dec. 30, 1997) (GTE Cross-Pet.).

This most recent cross-petition presents three questions, the first two of which are identical to the questions presented in the Regional Bell cross-petition, and the third of which is identical to the third question presented in the GTE cross-petition. (The first question presented here also appears as the first question presented in GTE's cross-petition.) On December 31, 1997, and January 6, 1998, respectively, we filed responses to the Regional Bell and the GTE cross-petitions, and we here incorporate those responses by reference. For the reasons discussed in those responses, we do not oppose certiorari on the first question presented in this cross-petition if this Court grants review of the second question in our petition in No. 97-831, but we do oppose certiorari on the second and third questions presented in this cross-petition.

**CONCLUSION**

We do not oppose the cross-petition with respect to the first question presented if the Court grants review of the second question presented in our petition in No. 97-831. The cross-petition should be denied with respect to its second and third questions presented.

Respectfully submitted.

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CHRISTOPHER J. WRIGHT  
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*Federal Communications*  
*Commission*

JANUARY 1998